IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.595 OF 2003

Shivajirao @ Subrao Hindurao Patil and Ors. .. Appellants

Versus

Sunil Dhondiram Sutar & ors. .. Respondents

Mr.Pratap Patil for appellants
Mr.R.V.More for respondents

CORAM : P.V.KAKADE,J.

DATE : 9th DECEMBER,2004

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Sangli dated 11.7.2004 allowing the Regular Civil Appeal No.985 of 1999 and decreeing the Regular Civil suit No.143 of 1989 for perpetual injunction against the respondent-defendant nos.1 to 5 and thereby reversing the order passed by civil judge, junior division, Islampur to dismiss the plaintiffs suit.

2. I heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs and the defendant No.6 are the joint family members. The suit properties are ancestral property of the said family. The defendant Nos.1 to 5 allegedly have no concerned or right whatsoever regarding the suit properties and they were never actual possession of the suit property. There was joint family property of plaintiffs and the defendant no.6 till the end of 1982. The defendant no.6 addicted to vices after the death of his wife. He was in service as a primary teacher. As per registered partition deed dated 19.2.1983 plaintiffs 1 to 3 have been allotted 1/2 share whereas the plaintiff no.4 has been allotted remaining 1/2 share in the suit properties. As per partition plaintiffs are in separate possession and Vahivat of the suit properties. The defendant no.6 had relinquished his share in the family estate as he had source of income as his service as a teacher. Since partition deed dated 19.2.1983, the defendant no.6 had no right whatsoever or concern whatsoever or possession and Vahivat in the suit property. Due to entries in the record of rights in the name of Land Development bank,

entry regarding partition deed did not take place. The defendant nos.1 to 5 have got executed deeds of sale transaction and mortgaged by conditional sale from defendant no.6 taking undue advantage of the vices of defendant no.6 and hence it was alleged that the said transaction was not binding upon the plaintiffs and property in question. The defendant no.2 had filed Regular Civil Suit No.600 of 1988 against the present plaintiffs 1 to 4 and defendant no.6 for permanent injunction regarding the suit property Gat No.288B and said suit was dismissed. The defendant nos.1 to 5 have unauthorisedly cut sugar-cane from the suit property and therefore, the suit for perpetual injunction came to be filed.

. The suit proceeded ex-parte against the defendant no.6. The defendant nos. 1 to 5 have filed written statement denying the plaintiffs claim and the allegation that partitions were effected by registered partnership deed dated 19.2.1983. The allegation regarding the defendant no.6 addiction to vices are also denied. According to those contesting defendants the transaction entered into by defendant no.6 is legal and valid and therefore the suit was sought to be dismissed

with costs.

4. The learned trial judge proceeded to adjudicate the dispute and came to the conclusion that the plaintiffs had not proved their lawful possession referable lawful title to the suit property and as such suit for perpetual injunction came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge, Islampur heard the appeal on merits and allowed the appeal decreeing the suit. Hence the present appeal.

5. At the outset it may be noted that perusal of the entire record including the judgments of both the courts below it is quite clear that issues of facts were involved which are properly adjudicated by the lower appellate court holding that the appellant-plaintiff has proved his possession over the suit property referable to legal title and he has also held that possession of the plaintiff was obstructed by defendant nos.1 to 5, and as such suit came to be decreed by allowing appeal. The learned counsel for the appellant urged that substantial question of law was involved to the effect that if the suit for injunction it is for the plaintiffs

to prove their possession and that also referable to valid title, which was not proved and hence the appeal required consideration. However, in my view the perusal of the judgment of the lower appellate court vis-a-vis referred documents, are seen to have properly established that plaintiffs possession is referable to valid title. The view taken by the lower appellate court to the effect that stranger purchaser cannot step in the shoes of co-parcener and therefore are not entitled under law to enjoy joint possession appears to be incorrect.

6. As laid down by the Supreme Court in the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory

reasons for doing so.

. The learned trial court has properly appreciated the entire evidence on record in correct perspective and therefore, I am of the view that it does not call for interference by this court.

7. In the result the appeal stands dismissed in limine with no order as to costs.

. Consequently the civil application also stands dismissed with no order as to costs.

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